

Entered on Docket

April 18, 2022

EDWARD J. EMMONS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: April 18, 2022

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5 HANNAH L. BLUMENSTIEL  
6 U.S. Bankruptcy Judge

7 UNITED STATES BANKRUPTCY COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 In re: ) Case No. 20-30242 HLB  
10 PROFESSIONAL FINANCIAL )  
INVESTORS, INC., ) Chapter 11  
11 )  
Debtor. )  
12 \_\_\_\_\_)

13 ORDER GRANTING IN PART AND DENYING IN PART FTI CONSULTING, INC.'S  
14 FOURTH AND FINAL FEE APPLICATION (DKT. 1089)

15 This case came before the court on March 31, 2022 for a  
16 hearing on the Fourth and Final Application for Compensation  
17 and Reimbursement of Expenses filed by FTI Consulting, Inc.  
("FTI").<sup>1</sup> Appearances were as noted on the record.

18 For the reasons stated herein, the court will grant the  
19 Application in part and will approve on a final basis fees and  
20 expenses for the Relevant Period (October 1, 2021 – December 15,  
21 2021) totaling: **\$1,085,859.51**, which consists of fees totaling  
22 **\$1,068,070** and expenses totaling **\$17,789.51**. The court also will  
23 grant the Application in part and will approve on a final basis  
24 fees and expenses previously approved on an interim basis  
25 totaling **\$14,044,719.20**, which consists of fees totaling  
26 **\$13,903,835.30** and expenses totaling **\$140,883.85**. These totals

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28 <sup>1</sup> Dkt. 1089 (the "Application").

1 represent a reduction in fees totaling \$521,923.86, an amount  
2 equal to 20% of FTI's Holdback of \$2,609,619.30 and no reduction  
3 to FTI's expenses.

4           **A.     FTI's Employment**

5           The court originally approved FTI's employment as financial  
6 advisor to debtors Professional Financial Investors, Inc. ("PFI")  
7 and Professional Investors Security Fund, Inc. ("PISF" and,  
8 together with PFI, the "Original Debtors") on October 13, 2020,  
9 with FTI's employment effective as of September 3, 2020.<sup>2</sup> This  
10 engagement contemplated that FTI would conduct a forensic  
11 investigation into the fraudulent activity carried out by the  
12 Original Debtors' former management, which appeared to have been  
13 conducted over many, many years.

14           FTI was selected as financial advisor after interviews of  
15 five candidate firms, with substantial input from the Official  
16 Committee of Unsecured Creditors (the "OCUC"), as well as from  
17 two court-appointed Ad Hoc Committees made up of Deed of Trust  
18 investors and LLC/LP investors. And FTI provided advisory  
19 services not only to the Debtors (as defined below), but to each  
20 of the Committees.

21           In February 2021, PFI, PISF, and several affiliated debtors  
22 (the "LLC/LP Debtors") moved<sup>3</sup> the court for approval of the  
23 employment of FTI Senior Managing Director Andrew Hinkelman as  
24 the Original Debtors' Chief Restructuring Officer ("CRO") and for  
25 approval of the expansion of FTI's original employment to include

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27           <sup>2</sup> Dkt. 211.  
28           <sup>3</sup> Dkt. 383.

1 its provision of financial advisory, forensic accounting, and  
2 investigatory services to the LLC/LP Debtors. The Original and  
3 LLC/LP Debtors asked that the court approve FTI's expanded  
4 employment and Mr. Hinkelmann's employment as CRO as of January 4,  
5 2021. The court entered an order granting this relief on March  
6 3, 2021.<sup>4</sup>

7 On March 22, 2021, after several additional affiliates of  
8 the Original and LLC/LP Debtors became debtors in bankruptcy (the  
9 "New Debtors" and, together with the Original Debtors and the  
10 LLC/LP Debtors, the "Debtors"), the New Debtors asked the court  
11 to further expand FTI's employment to provide them with financial  
12 advisory, forensic accounting, and investigatory services,  
13 effective as of February 18, 2021.<sup>5</sup> The court entered an order  
14 granting the New Debtors' request on March 31, 2021.<sup>6</sup>

15       **B.     FTI's Services**

16       Unwinding the Ponzi scheme perpetrated by Debtors' former  
17 management, while at the same time trying to manage the 41  
18 Debtors as legitimate businesses in pending bankruptcy cases, has  
19 proven an enormously complicated, monumental task. Former  
20 management's fraud affected approximately 1,800 innocent  
21 investors, and FTI consistent with the terms of its employment)  
22 took up the laboring oar in attempting to calculate the claim of  
23 each investor, an essential aspect of these cases.

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<sup>4</sup> Dkt. 442.

27       <sup>5</sup> Dkt. 495.

28       <sup>6</sup> Dkt. 522.

1       The results in this case have exceeded the court's  
2 expectations in virtually every respect. The Debtors, with  
3 significant input, support, and cooperation from the investors,  
4 as well as the OCUC and Ad Hoc Committees, confirmed a plan in  
5 June 2021 - less than a year after the first of these cases was  
6 commenced.

7       Approximately 6 months later, the Debtors closed a  
8 transaction through which substantially all of their real  
9 property was sold in exchange for gross proceeds in excess of  
10 \$436 million. Other real estate sales have recently closed or  
11 will soon close that will yield approximately \$30 million in  
12 additional gross proceeds for these estates.

13       None of this could have been accomplished without FTI's hard  
14 work. For most of the duration of these cases, FTI's work was  
15 supervised by Mr. Michael Goldberg, who has served as the  
16 Original Debtors' sole director since August 2020. Mr. Goldberg  
17 has been in almost daily contact with FTI and has closely  
18 monitored its services and the fees it has incurred. In  
19 assessing the Application, the court gave great weight to Mr.  
20 Goldberg's declaration<sup>7</sup> in support thereof, given his intimate  
21 involvement in every aspect of this case, his personal knowledge  
22 of the quality and scope of the services FTI provided, and his  
23 expertise in Ponzi scheme cases.

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28       <sup>7</sup> Dkt. 1338 (the "Goldberg Decl.").

1                   **C. Objections to the Application**

2                   The United States Securities and Exchange Commission (the  
3 "SEC") has objected to the Application.<sup>8</sup> The SEC Objection  
4 raises four points: **(1)** FTI's fees for its forensic accounting  
5 and investigatory services should be substantially reduced due to  
6 an excessive number of internal meetings or "virtual working  
7 sessions"; **(2)** FTI's fees for its forensic accounting and  
8 investigatory services exceeded the budget for such services by  
9 approximately \$756,000, and should be reduced accordingly; **(3)**  
10 FTI's fees for CRO services exceed the cap on such fees by  
11 \$122,564, and should be reduced accordingly; **and (4)** the blended  
12 hourly rate charged by FTI CRO services (\$685.00) is excessive  
13 and should be reduced.

14                  The SEC did not quantify the amount of the reductions for  
15 which it advocates in arguments (1) or (4), but with respect to  
16 argument (4), the SEC provided brief descriptions of cases it  
17 argues are similar to these and in which blended hourly rates  
18 range from \$311.00 - \$614.00. As to argument (3), FTI has agreed  
19 to reduce its fees by \$122,564.

20                  The United States Trustee filed a response,<sup>9</sup> which pertains  
21 not only to the Application, but to the other 13 fee applications  
22 filed at the same time by other estate-retained professionals.  
23 The UST Response states that it negotiated a \$13,000 reduction of  
24 FTI's fees. FTI does not dispute this.

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<sup>8</sup> Dkt. 1312 (the "SEC Objection").  
28                  <sup>9</sup> Dkt. 1301 (the "UST Response").

1           And finally, the court received approximately 150 letters  
2 from investors regarding the final fee applications filed by  
3 estate-retained professionals, including this Application. Most  
4 of these letters object generally and unspecifically to the fees  
5 these professionals requested. But a few point directly to FTI's  
6 Application,<sup>10</sup> noting that FTI exceeded its budgets and  
7 expressing disappointment that the sale of the Debtors' real  
8 estate portfolio did not realize a higher price, a result for  
9 which they blame FTI.

10           **D. Replies in Support of the Application**

11           FTI filed a reply in support of the Application.<sup>11</sup> In  
12 addition, FTI joined an omnibus reply<sup>12</sup> filed in response to the  
13 SEC's Omnibus Objection<sup>13</sup> to the final fee applications filed by  
14 Debtors' counsel and counsel for the Committees. The SEC Omnibus  
15 Objection expressly did not pertain to FTI's Application, but  
16 raised arguments as to the relevant professionals' hourly rates  
17 similar to those the SEC asserted in its Objection to the  
18 Application.

19           FTI's Reply touts the results achieved in these cases and  
20 the speed with which that happened. It criticizes the SEC for  
21 allegedly omitting from its analysis of blended hourly rates  
22 cases that were much more similar to these and in which  
23 professional charged blended hourly rates higher than that that

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25           <sup>10</sup> See, e.g., Dkt. 1355 (March 28, 2022 Letter from Mr. Keith Merron, former  
Chair of the OCUC).

26           <sup>11</sup> Dkt. 1334 (the "Reply").

27           <sup>12</sup> Dkt. 1337.

28           <sup>13</sup> Dkt. 1308 (the "SEC Omnibus Objection").

1 charged by FTI here. It points out that FTI provided its  
2 financial advisory services not only to the Debtors but to the  
3 OCUC and Ad Hoc Committees, which it asserts saved the estates  
4 the cost of these Committees each hiring its own financial  
5 advisory firm. And finally, FTI notes that its hourly rates were  
6 disclosed at the time of its employment and were approved by the  
7 Debtors and the Committees.

8           **E. Compensation and Expenses Sought**

9           The Application requests final approval of compensation and  
10 expenses the court previously approved on an interim basis, as  
11 follows:

12           (1) First Interim Application for Compensation<sup>14</sup>

Relevant Period:	Sept. 3, 2020 - Nov. 30, 2020
Interim Fees Approved:	\$5,124,533.75
Interim Expenses:	\$56,293.69
Interim Fees Paid:	\$4,099,627.00
Holddback:	\$1,024,906.75

13           (2) Second Interim Application for Compensation<sup>15</sup>

Relevant Period:	Dec. 1, 2020 - Apr. 30, 2021
Interim Fees Approved:	\$6,545,900.00
Interim Expenses:	\$44,090.20
Interim Fees Paid:	\$5,236,720.00
Holddback:	\$1,309,180.00

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27           <sup>14</sup> Dkt. 365, as amended by Dkt. 468 and approved by Dkt. 493.  
28           <sup>15</sup> Dkt. 697, approved by Dkt. 861.

### (3) Third Interim Application for Compensation<sup>16</sup>

Relevant Period:	May 1, 2021 - Sept. 30, 2021
Interim Fees Approved:	\$2,755,325.50
Interim Expenses:	\$40,499.96
Interim Fees Paid:	\$2,479,792.95
Holddback:	\$275,532.55

The fees previously approved on an interim basis total \$14,425,759.20, of which FTI has received payment of \$11,816,140.00 and of which \$2,609,619.30 remains held back (the "Holdback") to account for any reductions that might be ordered in connection with the Application. FTI has received payment of all of its interim expenses, which total \$140,883.85. The Application requests final approval of all of the foregoing fees and expenses and payment of the Holdback (less any reductions to which FTI has consented in connection with the Application).

The Application also requests final approval of fees and expenses incurred between October 1, 2021 - December 15, 2021 (the "Relevant Period"). These fees total \$1,203,634.00, which consists of fees for CRO services totaling \$954,444.00 and fees for forensic accounting and investigatory services totaling \$249,190.00. Not included in this amount is an additional \$15,000 in fees FTI anticipated incurring in connection with preparing and prosecuting the Application. FTI's expenses for the Relevant Period total \$17,789.51.

According to the UST Response, FTI has agreed to a reduction in its fees of \$13,000, which reduces the total fees requested in

28 |<sup>16</sup> Dkt. 971, as supplemented by Dkt. 1011 and approved by Dkt. 1050.

1 the Application to \$1,190,634. According to FTI's Reply, it also  
2 agrees to a further reduction of its fees by \$122,564.00, the  
3 amount by which the SEC contends it exceeded the cap on its fees  
4 for CRO services, which further reduces FTI's total fees during  
5 the Relevant Period to \$1,068,070. Adding these fees to FTI's  
6 expenses for the Relevant Period yields a total of \$1,085,859.51.

7 Approval of fees and expenses of \$1,085,859.51 as requested  
8 in the Application and approval of all prior interim compensation  
9 and expenses on a final basis would bring FTI's total  
10 compensation for these cases to \$15,652,502.20. This consists of  
11 fees totaling \$15,493,828.80 and expenses totaling \$158,673.36.

12 **F. Analysis**

13 The Application gives rise to a core proceeding in a case  
14 under Title 11<sup>17</sup> that this court may hear and determine and as to  
15 which it may enter a final order.<sup>18</sup>

16 FTI's employment is governed by section 327(a), which  
17 means the court must analyze the Application under section 330.  
18 Section 330 permits the court to award "reasonable compensation  
19 for actual, necessary services rendered . . . and reimbursement  
20 for actual, necessary expenses".<sup>19</sup> FTI bears the burden of

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22     <sup>17</sup> Unless otherwise indicated, all statutory citations shall refer to Title 11  
23 of the United States Code, aka the "Bankruptcy Code", and all citations to a  
24 "Bankruptcy Rule" shall refer to one of the Federal Rules of Bankruptcy  
Procedure.

25     <sup>18</sup> 28 U.S.C. §§ 157(a), (b)(1), and (b)(2)(A); General Order No. 24 of the  
26 United States District Court for the Northern District of California; In re  
Dexter Distrib. Corp., 2010 WL 6466583, \*4 (B.A.P. 9th Cir. October 21, 2010)  
27 (acknowledging bankruptcy court's subject matter jurisdiction with respect to  
applications for compensation filed by estate-retained professionals).

28     <sup>19</sup> Section 330(a)(1)(A) and (B).

1 proving that the fees and costs it seeks are compensable or  
2 reimbursable under section 330.<sup>20</sup>

3 In determining the amount of reasonable compensation to be  
4 awarded, the court must consider "the nature, the extent, and the  
5 value of such services, taking into account all relevant  
6 factors", including: (A) the time spent on such services; (B)  
7 the rates charged for such services; (C) whether the services  
8 were necessary to the administration of, or beneficial at the  
9 time at which the service was rendered toward completion of the  
10 case; (D) whether the services were performed within a reasonable  
11 amount of time commensurate with the complexity, importance, and  
12 nature of the problem, issue, or task addressed; (E) whether the  
13 applicant is board certified or otherwise has demonstrated skill  
14 and experience as a bankruptcy practitioner; and (F) whether the  
15 compensation sought is reasonable considering compensation  
16 customarily sought by comparably skilled practitioners in non-  
17 bankruptcy cases.<sup>21</sup> The court may not allow compensation for  
18 unnecessary duplication of services or for services that were not  
19 reasonably likely to benefit the debtor's estate, or that were  
20 not necessary to the administration of the case.<sup>22</sup>

21 The court has already entered orders approving in part the  
22 final applications for compensation that it heard at the same  
23 time as FTI's Application. Other than as to one of those  
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25 <sup>20</sup> In re IMG Transport LLC, 2012 WL 695019, \*3 (B.A.P. 9th Cir. Mar. 5, 2012)  
26 ("[t]he burden is upon the applicant to demonstrate that the fees requested  
are reasonable") (citations omitted).

27 <sup>21</sup> Section 330(a)(3)(A)-(F).

28 <sup>22</sup> Section 330(a)(4)(A).

1 applications, which was filed on behalf of an applicant whose  
2 fees and costs were being paid under an insurance policy rather  
3 than by these bankruptcy estates, the court declined to award  
4 fees the given professional anticipated incurring in connection  
5 with the preparation and prosecution of its final fee  
6 application. The court also reduced each professional's fees by  
7 an amount equal to 15% of the given professional's Holdback. The  
8 court will afford like treatment to FTI, which means that the  
9 court will decline to approve the Application's request for  
10 \$15,000 in anticipated fees and will reduce overall fees by an  
11 amount equal to 15% of FTI's Holdback, or \$391,442.89. This will  
12 reduce FTI's total fees to \$15,102,385.90.

13 The only remaining question is whether the court should take  
14 additional reductions for the reasons stated in the SEC  
15 Objection, the investor letters, or for any other reason. The  
16 parties do not dispute that, in evaluating the reasonableness of  
17 fees charged by any estate retained professional the court should  
18 consider rates charged by professionals with similar experience,  
19 performing similar services, in the relevant market.<sup>23</sup> They also  
20 do not dispute that the court has extremely broad discretion in  
21 determining whether fees are reasonable.<sup>24</sup>

22 With respect to the SEC's argument that the blended rate  
23 charged by FTI for its CRO services, the court finds that FTI has  
24 successfully carried its burden of proving the reasonableness of  
25 the rates it charged. The court does not find the parties'

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27 <sup>23</sup> In re Tower Park Props. LLC, 2021 WL 755771, \*5 (B.A.P. 9th Cir. Feb. 26,  
28 2021) (citation omitted).

<sup>24</sup> Id.

1 comparison of cases persuasive one way or another. Rather, the  
2 court gives great weight to the fact that the Debtors, the  
3 Committees, and Mr. Goldberg accepted FTI's rates at the outset  
4 of its employment. While the court preserved the SEC's right to  
5 raise this argument in connection with the Application, it did  
6 not suggest that it agreed with it. And now, even with the  
7 benefit of the comparable cases to which the SEC cites, the court  
8 chooses instead to focus on the deal struck by the parties whose  
9 resources would be used to fund FTI's work: the Debtors and the  
10 Committee, and more particularly, the investors, who were  
11 involved every step of the way. In the absence of more  
12 persuasive evidence demonstrating that FTI's blended rate for CRO  
13 services was excessive, the court declines to disturb it.

14 The SEC and many investors also took issue with the fact  
15 that FTI repeatedly exceeded its budget, often without receiving  
16 prior permission to do so from the Debtors. Mr. Goldberg and FTI  
17 acknowledge this, but they explain that the Debtors' records were  
18 in a state of disarray far greater than anyone imagined, which  
19 made FTI's work exponentially more difficult. They also point  
20 out that FTI has already voluntarily reduced its fees or  
21 otherwise not billed for much of the additional work it was  
22 required to perform in order to complete its task of recreating  
23 the Debtors' records and calculating the investors' individual  
24 claims. And finally, they note that FTI worked with the Debtors  
25 and the Committee to implement greater control over FTI's work  
26 and closer monitoring of its adherence to its budgets.

27 Neither the SEC nor the investors dispute Mr. Goldberg's or  
28 FTI's explanations of how and why FTI's job proved much more

1 challenging than anyone originally imagined. They also do not  
2 dispute that FTI, the Debtors, Mr. Goldberg, and the Committees  
3 addressed FTI's adherence to its budget. They simply argue that  
4 budget overruns should not occur absent prior approval and they  
5 insist that the court reduce FTI's fees to account for these  
6 allegedly poor billing practices. The court respectfully  
7 disagrees.

8 The court gives great weight to the fact that the Committees  
9 and Mr. Goldberg support FTI's Application, as well as to their  
10 unanimous assertion that, once they imposed greater control over  
11 FTI's work and more closely monitored FTI's adherence to its  
12 budget, they experienced no additional difficulty. The court  
13 also agrees with FTI's argument that its prior voluntary  
14 reductions are more than sufficient to account for budget  
15 overruns.

16 The SEC takes particular issue with FTI's billing for  
17 "virtual working sessions", arguing that FTI has failed to  
18 justify these multi-person meetings as required. FTI goes to  
19 great lengths to explain the necessity of these meetings and  
20 contends that it has already taken voluntary reductions that more  
21 than make up for any billing the court might find inappropriate.

22 After taking the Application under advisement, the court  
23 reviewed once again FTI's time sheets submitted with each of its  
24 fee applications, including the Application. For the most part,  
25 FTI's employees were judicious with their time and employed sound  
26 billing practices. With respect to the many meetings and  
27 conferences (virtual and otherwise) that occurred between FTI  
28 employees and other professionals and/or parties in interest, the

1 court believes such meetings were necessary to the effective  
2 administration of these cases. Simply put, professionals have to  
3 talk to one another and the court finds nothing unusual or  
4 unreasonable about the number or length of meetings that took  
5 place in these very complicated cases.

6 But the court did identify many, many examples in which FTI  
7 employees billed for clerical tasks. For the most part, these  
8 problems were attributable to FTI billers with relatively low  
9 hourly rates, which blunts the impact of this issue on the fees  
10 charged. But the court concludes that an additional reduction in  
11 fees must be taken.

12 Rather than identifying problematic time entries one by one,  
13 the court will exercise its substantial discretion and reduce  
14 FTI's fees by a total amount equal to 20% of its Holdback, or  
15 \$521,923.86. This will adequately account for time billed for  
16 clerical tasks, and adequately accommodates voluntary reductions  
17 and discounts FTI has already taken.

18 Nothing in this order should be interpreted as the court  
19 disregarding the investors' letters or the sentiments they  
20 express. As the court has repeatedly acknowledged, this is a  
21 terrible situation. Many of the investors counted on  
22 distributions from their investments in the PFI enterprise to  
23 secure their retirement. Without that income, many of them have  
24 had to return to the workforce. For those who are unable to  
25 continue or resume working, the situation is more dire. While  
26 Mr. Goldberg and other professionals continue to pursue other  
27 sources of recovery for the investors through litigation taking  
28 place in other courts, it appears that investors will not see

1 much more in the way of distributions from these bankruptcy  
2 estates. Nothing the court can do will change that heartbreaking  
3 result.

4 But the court does not believe it fair to point to FTI as  
5 the cause of their disappointment. This case was incredibly  
6 complex - much more so than even the most experienced of these  
7 professionals ever imagined. FTI worked incredibly hard, and  
8 other than the narrow issue the court has identified, the court  
9 is unable to find or conclude that FTI's work was not entirely  
10 necessary to the administration of these cases or that FTI's fees  
11 were not reasonable. Professionals cannot guarantee results.

12       **G. Conclusion**

13       For the reasons stated herein, the court **ORDERS** as follows:

14       **1.**      The Application is **GRANTED IN PART AND DENIED IN PART**.  
15       **2.**      The court hereby **GRANTS IN PART** and **APPROVES** the  
16 Application on a final basis as to fees and expenses for the  
17 Relevant Period totaling: **\$1,085,859.51**, which consists of fees  
18 totaling **\$1,068,070** and expenses totaling **\$17,789.51**.

19       **3.**      The court hereby **GRANTS IN PART** and **APPROVES** on a final  
20 basis fees and expenses previously approved on an interim basis  
21 totaling **\$14,044,719.20**, which consists of fees totaling  
22 **\$13,903,835.30** and expenses totaling **\$140,883.85**. These totals  
23 represent a reduction in fees totaling \$521,923.86, an amount  
24 equal to 20% of FTI's Holdback of \$2,609,619.30 and no reduction  
25 to FTI's expenses.

26       **4.**      The Debtors are authorized to immediately pay FTI a  
27 total of **\$3,173,554.95**, which consists of fees and expenses for  
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the relevant period totaling \$1,085,859.51 and \$2,087,695.44 of the Holdback.

3       5. To the extent the Application seeks \$15,000 in fees FTI  
4 anticipated incurring in connection with the preparation and  
5 prosecution of the Application, it is hereby **DENIED IN PART**.

6        6. To the extent the Application seeks final approval of  
7 fees and expenses in excess of those awarded by this order, it is  
8 hereby **DENIED IN PART**.

**\*\*END OF ORDER\*\***

**Court Service List**

[None]